IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7425 OF 2004
ALONGWITH
WRIT PETITION NO.7429 OF 2004
ALONGWITH
WRIT PETITION NO.7414 OF 2004

M/s.Shri Saraswati Concrete Works ..Petitioners
(In all the Petitions)

Vs.

The State of Maharashtra & Anr. ..Respondents
(In all the Petitions)

Shri A.B.Borkar for the Petitioner in all Petitions.
Shri Cardoz, A.G.P for the State in all Petitions.
Shri A.M. Chatage for the Respondent No.2 in all Petitions.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 20, 2007.

P.C.:

1. Heard Advocates appearing for the parties. Considering the fact that dispute involved in these Petitions is more or less the same, a reference is made to the facts of the case in Writ Petition No.7425 of 2004.

2. The Petitioner is the original Plaintiff. The Petitioner filed a suit for declaration and injunction. The said suit filed in the year 1988 was decided in the year 1994. Appeal was preferred by the Petitioner on 17th August, 1994 in the District Court. Nearly ten years thereafter, on 27th July, 2004, the Petitioner filed an Application for amendment of the plaint in the pending Appeal. By the said amendment, an additional

paragraph was sought to be incorporated in the plaint for claiming right of easement by way of necessity. By the impugned order the said Application has been rejected.

3. The learned Advocate for the Petitioner submitted that it is not the case of the Respondents that the amendment was barred by limitation. He submitted that even if amendment is allowed, the Petitioner is not desirous of leading any further evidence. He, therefore, submitted that there is no prejudice to the Respondents if amendment is allowed. In a suit filed in the year 1988, the decree was passed in the year 1994. Ten years after preferring the Appeal when the Appeal was fixed for hearing, the Application for amendment has been made. Considering the nature of the order impugned, the same can be always challenged in a proceeding which may be filed by the Petitioner for challenging the decree passed in Appeal. Considering the belated stage at which the Application for amendment was made by the Petitioner, this is not a case to interfere in extra- ordinary jurisdiction under Article 227 of the Constitution of Indian. Subject to what is stated above, Writ Petitions are rejected. All contentions of the parties in the pending Appeal are kept open.

JUDGE